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ABSTRACT

The guidelines cover processes for placing handicapped students in private or (New York) state operated or state supported schools. Procedures are set forth regarding placements by each of three approaches: (1) contracts with private schools (in or out of state); (2) parent application for placement in state operated or state supported schools; and (3) placement in private settings by public agencies such as social services. For each of the three types of placement, information is provided on local district responsibilities, roles of the parents and of the state education department, the private or state school responsibility, placement and development of the individualized education program (IEP), due process considerations, and funding aspects. It is explained that the three processes share requirements for IEPs, placement in the least restrictive environment, and availability of a full continuum of special services. (CL)

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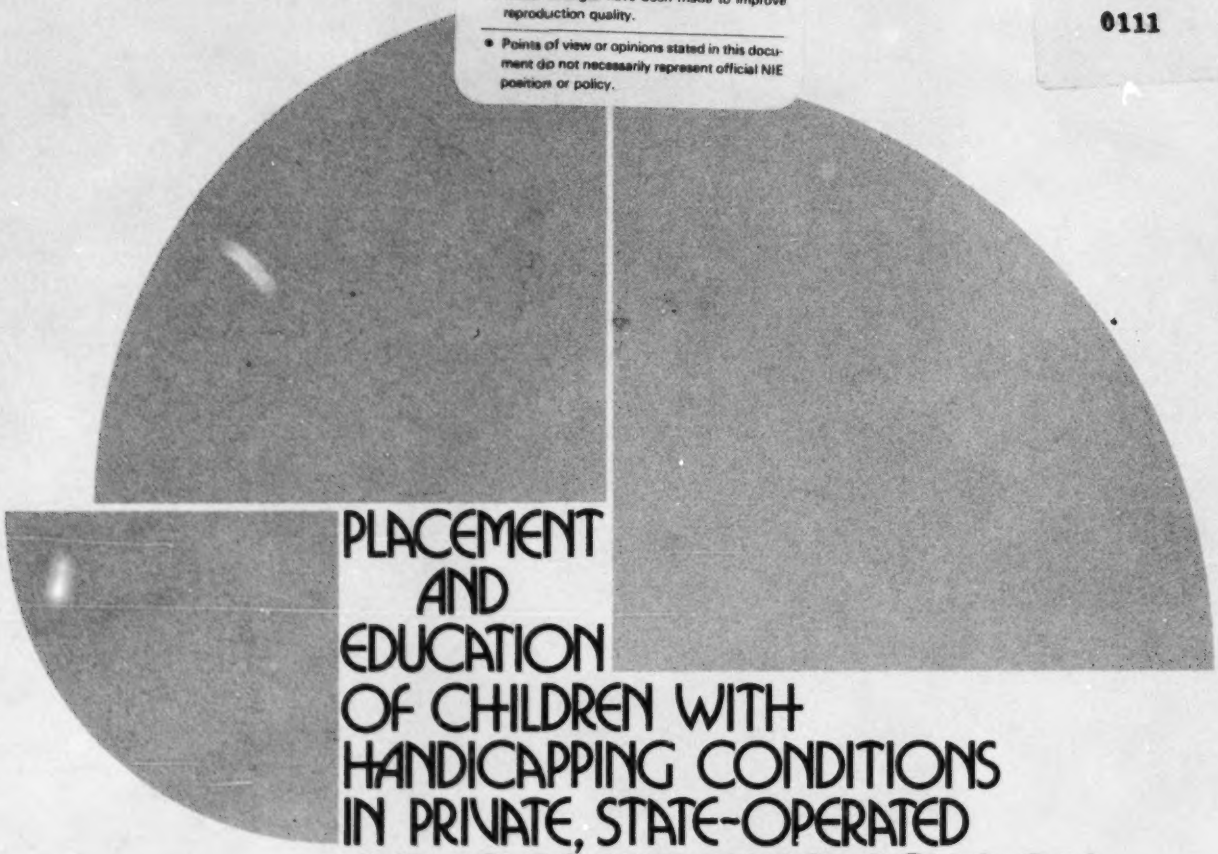

PLACEMENT AND EDUCATION OF CHILDREN WITH HANDICAPPING CONDITIONS IN PRIVATE, STATE-OPERATED AND STATE-SUPPORTED SCHOOLS

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
OFFICE FOR EDUCATION OF CHILDREN
WITH HANDICAPPING CONDITIONS
ALBANY, NEW YORK 12234

JANUARY 1982

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Introduction

New York State has approximately 15,500 children with handicapping conditions receiving services in approved private, State-operated or State-supported schools, with 500 of these children being educated in locations outside of the State.

The purpose of this document is to present an overview of the processes for placement of handicapped students in private or State-operated and State-supported schools, and to delineate the roles and responsibilities in the provision of educational services. The information contained in this publication has been developed to address the interests and concerns of local education agencies, private schools, and parents of handicapped children placed in these educational settings.

The New York State Education Department (SED) is responsible for overseeing the provision of educational services to all handicapped children who are residents of the State regardless of where they are receiving instruction. This includes those children placed in settings for purposes of family care or custody and those whose needs are so severe that placement in a program providing twenty-four hour a day care is necessary. Placements in these settings primarily occur through three separate but similar processes:

- Contracts with Private Schools: When local school districts determine through the development of an Individualized Education Program (IEP) that the needs of the child can only be met in a private school, the district may contract with an in-State school approved by the Education Department to provide special education services to handicapped students. If an out-of-State placement is required, the district applies to the State Education Department for the provision of services.

- Placements in State-Operated or State-Supported Schools: Parents of blind, deaf, or severely physically handicapped children may apply to the Commissioner of Education to have their child placed in an appropriate State-operated or State-supported school. The severity of the child's handicap has to be such that only these facilities can appropriately design and implement an IEP that meets his or her unique special education needs.

- Placement by Public Agencies: Children thought or known to be handicapped are placed in private settings by public agencies (e.g., social services) for a variety of reasons. These placements, which are often initiated as a result of adjudication or for the purpose of habilitation, cannot ignore the child's right to an education. Involvement with local school districts is necessary throughout the process of placement and the provision of special education services.

These three processes are similar in that the educational program provided is determined through the development of an Individualized Education Program and that the placement options have been approved by the State Education Department after an intensive programmatic and financial review.

In New York State the Committee on the Handicapped (COH), through the involvement of appropriate professionals and parents, is responsible for the development of an IEP in which the concept of the least restrictive environment must be reflected. This concept ensures that:

- The child's special education needs are met,
- The child is educated to the maximum extent appropriate with other students who are not handicapped,
- The child receives services as close to home as possible.

The least restrictive environment for a given pupil depends on many things—management needs, educational strengths and weaknesses, motivation and more. For one pupil, the least restrictive environment may be a regular class program with related services; for another it may be a residential private school placement. Local school districts must make every effort to find a program which meets the pupil's needs within the district, a neighboring district, or Board of Cooperative Educational Services (BOCES). If none of these programs are appropriate and/or available, the child may need to be placed in an alternative setting.

Private schools or residential options are one aspect of a full continuum of services and placements which are available to meet the unique special education needs of handicapped students. A Committee on the Handicapped, through the IEP process of referral, evaluation and the development of Phase I recommendations, considers the needs of the pupil in relation to the available placement options. If the COH determines that a child has a severe or profound disability or an unusual combination of disabilities, they may recommend a private day or residential setting as the option that best meets the individual educational needs of that child.

Another aspect in the provision of a full continuum of services is the availability of education programs within the public school district for students in private facilities located within the district. Public school programs are available to students residing in group homes, community based facilities operated or licensed by public agencies and various other residential settings. These living situations serve as home for over 14,000 children, with a variety of these students being identified as handicapped and eligible for those educational services listed in Section 4401 of the Education Law. These services can be provided either in schools located within the facilities or in the local public school district.

The placement process for children with handicapping conditions in private settings is similar to the procedures addressed in the Part 200-2 Regulations of the Commissioner of Education for all placements. This manual will not repeat information contained in other publications but rather will refer the reader to appropriate material where more in-depth information may be found. A form for ordering these manuals and legal references is contained in Appendix B.

LOCAL SCHOOL DISTRICT CONTRACTS WITH PRIVATE SCHOOLS

Article 89

Chapter 853 of the Laws of 1976 was enacted to ensure and protect the rights of educationally handicapped pupils to a free appropriate public education in the least restrictive environment. This Act, which amended Article 89 of the Education Law, sets forth provisions for the public placement of pupils with handicapping conditions in private schools.

Section 4402 authorizes public school districts to contract with approved in-State private schools for the placement of a handicapped child in a special service or program that is appropriate for the special education needs of the child. In order for a public school district to enter into a contract with a private school, the Board of Education of the district must certify that no appropriate public in-State program is available.

Section 4407 authorizes the State Education Department to assist public school districts by contracting with approved out-of-State educational facilities for special services or programs where no appropriate public or nonpublic in-State facility is available.

All district requests to contract with in-State or out-of-State private schools require the Commissioner's approval on an annual basis. The school in which placement is requested must have been approved by the Commissioner prior to the student's placement.

Most handicapped pupils participate in special programs and services in their home school district or at a neighboring school district; others are enrolled in BOCES programs. When these special education placements are not available or appropriate, responsibility for the selection and implementation of the educational program at a private day or residential school is shared by the home school district, private school staff, New York State Education Department and the child's parents.

Local District Responsibilities

The home school district, sometimes called the local educational agency (LEA), is responsible for selecting an appropriate private school placement from those approved by the New York State Commissioner of Education. When it has been determined that a given private school would be appropriate for the pupil, the LEA must complete an SED application (PHC-2 form) for placement.* This application must be approved by the Commissioner prior to execution of contracts or arrangement of final placement. In placing a pupil in a private school, all of the elements listed in Phase I of the Individualized Education Program must be provided including class size, related services and specialized equipment. After the pupil has been placed, the district remains involved and responsible for the child's educational program. Contact with the local school through sharing information and evaluations is necessary to assure proper review of the Individualized Education Program.

*A sample PHC-2 form has been included as Appendix C. Forms are available from SED regional representatives whose locations are listed in Appendix A.

For out-of-State placements the LEA applies to the Commissioner. Only the SED may contract with out-of-State schools.

Private School Responsibilities

In-State and out-of-State private schools in which New York State pupils are placed are responsible for providing appropriate educational programs as outlined in the Regulations of the Commissioner of Education and contracted for by the public school district of residence or the SED. The private school must work within the parameters set forth in Phase I of the IEP. Phase II of the IEP must be developed annually by private school personnel with staff from the sending district given the opportunity to participate in the development meeting. Section 200-2.7(b)(9)of the Commissioner's Regulations mandates that a completed Phase II and an educational progress report on each pupil must be submitted to the home school district along with any other information. Additionally, if it is apparent that a pupil's program or placement is no longer appropriate, a referral should be submitted by the private school staff to the placing district's Committee on the Handicapped.

State Education Department Responsibilities

The State Education Department both assists and regulates activities of the public schools, private schools and parents. It provides technical information and enforces laws and regulations which define the roles and responsibilities of parent and educator. The goal is to ensure that appropriate types and intensities of special education services are available to handicapped pupils and that due process procedures which safeguard the educational rights of parents and their children are in place. All public and private schools in which New York State pupils are placed are monitored periodically by SED for compliance with State laws and regulations. The SED is also charged with contracting for out-of-State placements. This occurs only upon application by local school districts.

Parent Responsibilities

The parents or guardians of each child referred to the school district Committee on the Handicapped are notified and actively involved in the evaluation, recommendation and placement process. Written consent is required prior to initial individual evaluations and the initial provision of special education services. Each parent participates in the decisions affecting their child's educational program, and it is especially important that the information and insights they have be shared:

- At the COH meeting when eligibility for special education, appropriate programs and services, and long-range goals are determined,
- At the IEP planning conference when short-range goals and methods for measuring progress are determined,
- Whenever it is felt that the program or placement is no longer appropriate.

If, in an effort to do what they feel is best, parents at any time directly place their child in a private school they are responsible for any expenses incurred.

IEP Development*

Phase I: Within 30 school days of a referral being received by the building administrator or the COH, the Committee must:

- Complete an individual comprehensive evaluation,
- Conduct a meeting at which a recommendation to the Board of Education will be developed,
- Forward the recommendation to the Board of Education for their determination.

Within 30 school days of the date the COH recommendation is received, the Board's decision must be implemented. This includes the placement of students in alternative educational settings.

Phase II: Planning Conferences for pupils placed in private residential or day schools must be conducted just as they are for children placed in an in-district program. The teacher will receive the Phase I information necessary for completing the IEP (Phase II). Additions in Phase II include short-term objectives and appropriate criteria for evaluating the pupil's success in achieving the goals of the IEP.

Annual Review: Each handicapped pupil's IEP must be reviewed and, if appropriate, revised periodically, but not less than annually. A Committee on the Handicapped must also arrange for a comprehensive reevaluation of every handicapped pupil by appropriate professionals at least every three years.

Procedures Required for the Commissioner's Approval for Private School Placement**

The Board of Education may seek approval for in-State residential placements only if there is no appropriate nonresidential program available. If the BOE determines that the appropriate type of placement requires approval of the Commissioner, a PHC-2 form must be completed and submitted to the Regional Associate prior to the placement of the child in the program.***

Only the Commissioner may contract for out-of-State services. If a local district determines the need for an out-of-State private placement the application must include written statements from five in-State private schools that an appropriate program is not available. For any residential placement a similar statement from the local BOCES is suggested but not required.

Notification of the Commissioner's approval of placement (PHC-5 form) will be sent to the LEA and the private school. The child should not be placed in the requested program prior to approval. If appropriate, notification of approval of maintenance expense (PHC-3 form) will be made to the school of placement and the child's county of residence.

*Refer to Appendix B, The Individualized Education Program.
**Refer to Appendix C.
***Regional Associates are State employees who are authorized to act for the Commissioner of Education in approving variances and private school placements; a listing of their offices is included in Appendix A.

When a handicapped student is being considered for placement in a private school program, the parents have all the rights to procedural due process defined in Part 200-2 of the Regulations of the Commissioner. For a more in-depth explanation of due process, Appendix B lists various handbooks designed to assist parents and school officials in interpreting and implementing education laws and regulations.

Financial Responsibilities

The Commissioner determines the allowable tuition and maintenance rates that may be charged by private schools. In the case of in-State private school placements, provision is made in the Education Law for partial reimbursement to the local district for tuition and transportation expenses, subsequent to review and approval by the Commissioner. Maintenance expenses are paid by the county Department of Social Services with partial reimbursement by the State Department of Social Services.

In the case of out-of-State private school placements, the tuition charges are the financial responsibility of the State Education Department with reimbursement of the "basic contribution" by the LEA. Payments are made by the Department directly to the private school providing services. Provision is made for reimbursement to the district for transportation expenses. Maintenance expenses incurred by the county Department of Social Services are also partially reimbursed by the State Department of Social Services.

Other Considerations

Transportation: The Board of Education of each school district must provide suitable transportation to and from special classes or programs.

For pupils in a nonresidential program, transportation must not be in excess of fifty miles from the home of a pupil to the appropriate special service program. The Commissioner may grant a variance if no appropriate nonresidential special service or program is available within this limit. A transportation variance may be applied for by completing a PHC-2 form.

The Commissioner's Regulations specify that transportation must be provided for pupils in residential placements:

- From the pupil's home to the school at the start of the school year,
- From the school to the pupil's home at the conclusion of the school year,
- No more than three additional trips to and from school during the school year.

The Commissioner may establish a maximum number of trips between a pupil's home and the private school which provides special services or programs to the pupil. Additional trips may be provided for the periods during which residential care is not provided to the pupils attending the school (e.g., holidays).

Summer School Programs: Some handicapped pupils require the consistency of a twelve-month school program. Under Section 4406 of the Education Law, it is the responsibility of parents to file an HC2-1 form with the Family Court in order to secure payment for school tuition, transportation and maintenance during July and August. If approved, one-half of the cost is paid by the county with the remainder being paid by the State.

ADMISSION AND INSTRUCTION OF HANDICAPPED PUPILS IN STATE-OPERATED AND STATE-SUPPORTED SCHOOLS

Articles 85(Section 4201), 87, 88 and Chapter 1060 of the Laws of 1974

For children with severe disabling conditions, special education programs at certain State-operated and State-supported schools are available. Children with individual needs of such intensity that placement in district settings is inappropriate, are eligible for these programs. Responsibilities in the admission process are different than other private school placements. The direct involvement of the parents with the State Education Department initiates an admission process that determines a child's eligibility for these programs. Those who are eligible include the:

- Profoundly deaf,
- Deaf-blind,
- Legally blind, at least kindergarten age or receiving a special instructional program at the preschool level,
- Severely physically handicapped, between the ages of 3 and 21.

Educational services for deaf infants are available at schools approved by the Commissioner of Education. The eligibility criteria for this special population is as follows. The child:

- Is less than three years of age,
- Has a severe hearing loss which precludes the learning of spoken language through the sense of hearing alone,
- Is unable to respond to sounds presented at determined decibel levels.

The scope of the educational programs of State-operated and State-supported schools has been defined through:

- New York State Education Law - Articles 85(Section 4201 Schools), 87, 88,
- Chapter 1060 of the Laws of 1974 (Human Resources School),
- Part 200-2 of the Regulations of the Commissioner of Education.

For the purposes of this section, the use of the word "school" or "schools" will refer to all those State-operated and State-supported schools defined in the above laws and regulations.

Responsibility for IEP development, the placement and the education of children in State-operated or State-supported schools lies mainly with the respective school, the State Education Department and the parents. The local school district serves primarily in a supportive capacity.

The Role of the Local School District

Initial recognition of a pupil's need for placement in these specialized schools often occurs through activities of the district Committee on the Handicapped. Upon evaluation of the child, the findings may indicate that the pupil cannot benefit from education in a district setting. The Committee's recommendation must be communicated to the pupil's parents. The parents may then make an application for their child's admission to a special school through a PHC-10 form.* The district may help the parents in the application procedure, but it is the parents' responsibility to initiate contact with the Commissioner. Other responsibilities of the COH may include a reconsideration of the pupil for district programming when a State-operated or State-supported facility finds that the pupil is ineligible for either its educational program or a program in a similar school within the State. In addition, the Committee must keep a record of all pupils from the district who are being educated in these schools.

The Role of the Parent

It is the parents' responsibility to apply for their child's appointment to a State-operated or State-supported school. This application (a PHC-10 form), sent to the SED Office for the Education of Children with Handicapping Conditions (OECHC), must provide adequate written evidence of the severity of the child's handicap.* The parents must also arrange, through SED, for an evaluation of their child by a designated school. If the child is found to be eligible for the programs of the school, the parents will participate in the development of the school's recommendations for special education placement and services (Individualized Education Program).

Parents applying for their child's admission to these facilities have the due process rights of written notice describing actions to be taken, and written consent prior to the initiation of those actions. Parental consent must be obtained before the child's evaluation and initial special education placement.

The Role of the State Education Department

The SED's responsibilities begin with an initial determination of a child's need for special education services at a State-operated or State-supported school. The Office for the Education of Children with Handicapping Conditions (OECHC),acting on behalf of the Commissioner, directs the parents to a designated school for evaluation and determination of eligibility. The school forwards its recommendations to OECHC after the child has been evaluated.

The Office is then responsible for approving the school's recommendations for special education services for the pupil. This is accomplished by appointing pupils to such facilities and directing the funding of their education. For those children found to be ineligible, the Office will suggest alternative placements. Finally, the State Education Department maintains lists of approved schools and of impartial hearing officers who may be called to direct hearing proceedings when they become necessary.

*A sample PHC-10 form is included in Appendix D.

The Role of the State-Operated or State-Supported School

The designated school is responsible for determining a child's eligibility to receive special educational services at that facility. This decision is made through a comprehensive evaluation and review by the school's evaluation team.

For children found to be eligible and appointed by SED, the school will involve the parents in developing the Individualized Education Program; this includes the IEP Phase I recommendations and the Phase II planning conference. Implementation, annual review and a triennial comprehensive reevaluation of each child are also responsibilities of the school.

If a child is determined to be ineligible, the school must notify the parents as to why its program is inappropriate for the child's needs; the school will also recommend an appropriate alternate placement or program.

Placement and IEP Development

The consideration of a handicapped child for placement in a State-operated or State-supported school begins with an application (PHC-10 form) by the child's parents to the OECHC, Bureau of State-Operated and State-Supported Schools (BSOSSS). The local district COH may assist the parent in completing and forwarding this form which must include documentation of the severity of the child's handicapping condition. Upon receipt of the application, OECHC directs the parents to a specific school for evaluation of the child.

The designated school will send a written notice to the parent(s). This notice includes:

- A description of the school's timeline and plan for evaluating the pupil,
- How the evaluation information will be used,
- A request for parental consent to conduct the evaluation,
- The location and time of the meeting for developing Phase I of the IEP.

With parental consent, the evaluation which will form the basis for determination of the child's eligibility for special education and attendance at the school is conducted. Together with the parents, the school's evaluation team uses this information to develop Phase I of the IEP. The school superintendent must provide written notices to the parents and the BSOSSS of the determination. If the child is ineligible for special education at that school, the notice will include:

- The reasons for the decision,
- A description of the Individualized Education Program components which meet the pupil's individual needs but which cannot be provided by that school,
- A recommendation for an alternative placement.

If the child is eligible, the notice will include:

- Phase I recommmendations of the IEP,
- Information on the tests/reports used to determine the present levels of educational performance and individual educational needs,
- A request for parental consent to educate the child in the recommended placement,
- A notice of due process rights (200-2.5 (b)) including a description of procedures necessary if the parent(s) disagree with the recommendations.

If the Bureau of State-Operated and State-Supported Schools and parent(s) are in agreement with the superintendent's recommendation, one of the following will occur:

a. Recommendation of ineligibility - BSOSSS will refer the child to an appropriate school, or if the appointment is inappropriate, to the local school COH.

b. Recommendation of eligibility - With written parental consent for those students entering special education for the first time, the BSOSSS will appoint the child to the designated school.

The pupil will enter the recommended program at the time designated by the Commissioner. For those pupils entering special education for the first time this placement must occur within 30 days of the superintendent's recommendation.

Phase II of the IEP is completed at a planning conference which a representative of the local district is invited to attend. Written notice of the mutually agreed upon time and place should be sent to the parents 5 days prior to the meeting. The IEP must be reviewed at least annually. Any recommendations arising from this review are to be communicated by the superintendent of the State-Operated or State-Supported School to both the parents and the SED.

Due Process Considerations

Parents of pupils placed in these schools have the right to request an impartial hearing and, if necessary, a formal appeal regarding their child's educational program and placement. Events that may necessitate these formal proceedings include the parents' disagreement with the school or the Commissioner over the following actions:

- The school fails to conduct an evaluation within 30 days of the pupil's referral,
- The Commissioner does not recommend an appointment,
- The school decides that the child's handicapping condition is not severe enough to warrant an education in their setting,

- The school or the Commissioner recommends a change in the pupil's classification or educational placement.

The flow chart at the end of this section provides a step-by-step review of the due process procedures.

Funding Considerations

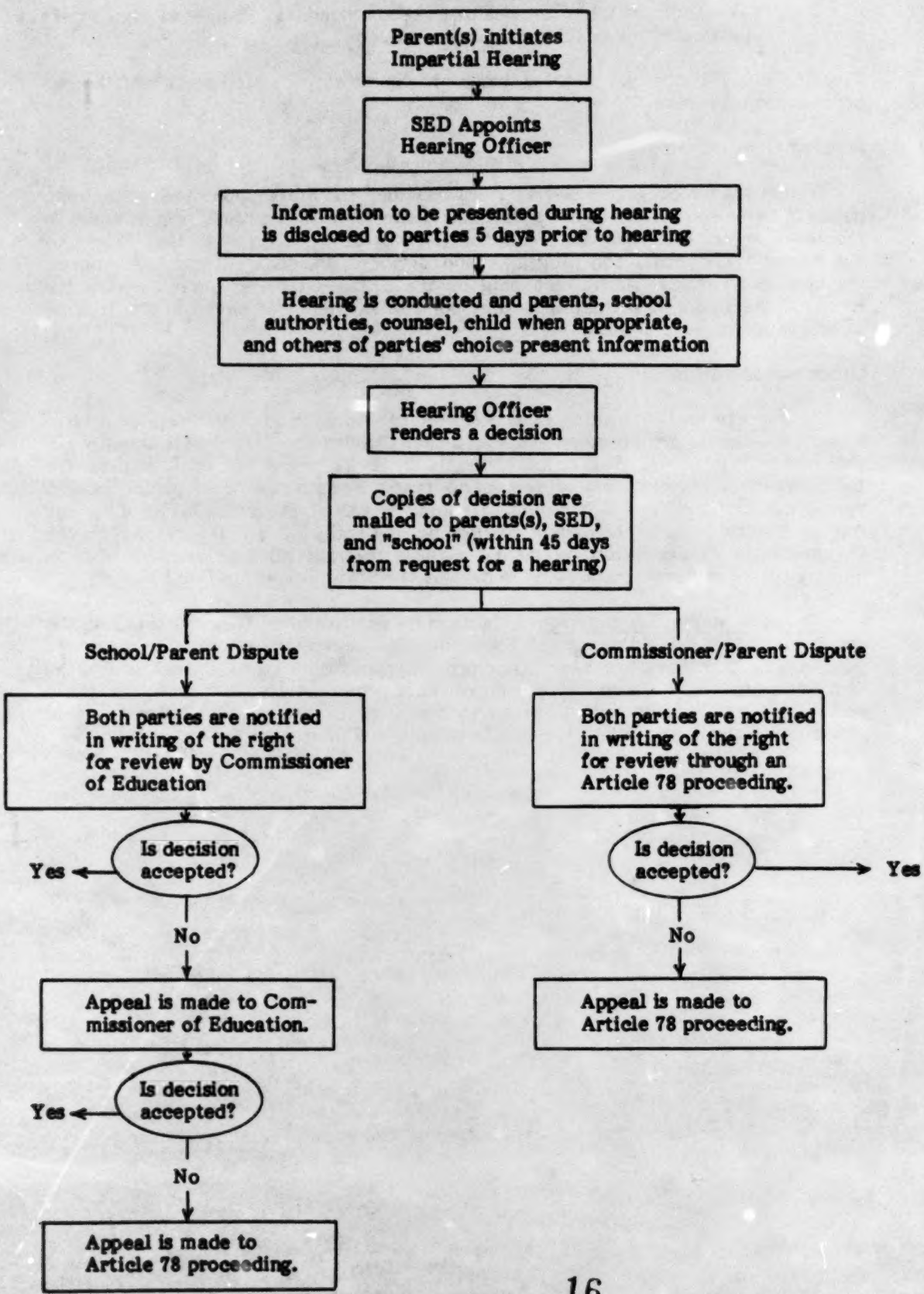
The costs for programs and services provided for State-appointed, school-age pupils in these schools are paid by the State Education Department. Funds equal to the home school district's basic-contribution will be transferred to the schools by the State. The costs for programs and services to deaf infants and special instruction for their parents are paid by the SED. Other agencies such as the Health Department or private insurance companies may be involved in the funding of programs for deaf infants.

Other considerations

Transportation: Handicapped children attending State-operated or State-supported schools are provided transportation through the Board of Education of the child's home school district. Pupils 5 to 21 years old are eligible for transportation services from September to June. Transportation of pupils under 5 years old or for school-age pupils attending a school program during July and August may be provided through a petitioning of Family Court. If approved by the Commissioner of Education, payment for these transportation services is made in part by the county government and in part by the State Education Department.

Transfer and/or Termination: Appropriate notification of the parents and the approval of the Commissioner of Education are necessary before a handicapped pupil can be transferred or have his or her program terminated. In both cases, the State-operated or State-supported school must provide suitable reasons for these actions. Consideration will be given to the time of the year in order to avoid interrupting the continuity of the pupil's educational program.

The Chart Below Describes The Due Process Procedures When The School/Parent or Commissioner/Parent Are In Disagreement


Parent(s) initiates Impartial Hearing
SED Appoints Hearing Officer
Information to be presented during hearing is disclosed to parties 5 days prior to hearing
Hearing is conducted and parents, school authorities, counsel, child when appropriate, and others of parties' choice present information
Hearing Officer renders a decision
Copies of decision are mailed to parents(s), SED, and "school" (within 45 days from request for a hearing)
School/Parent Dispute
Commissioner/Parent Dispute
Both parties are notified in writing of the right for review by Commissioner of Education
Both parties are notified in writing of the right for review through an Article 78 proceeding.
Is decision accepted?
Yes
No
Is decision accepted?
Yes
No
Appeal is made to Commissioner of Education.
Appeal is made to Article 78 proceeding.
Is decision accepted?
Yes
No
Appeal is made to Article 78 proceeding.

PLACEMENT OF CHILDREN BY PUBLIC AGENCIES

Article 81

Overview

The Institution Schools Act, enacted by the State Legislature as Chapter 563 of the Laws of 1980, ensures that handicapped children placed in child care institutions by public agencies (e.g., Family Court, the Department of Social Services, or the Division for Youth) are provided an appropriate education and the right to due process of law.

Child care institutions are defined as facilities serving thirteen or more children and licensed by the Department of Social Services. Residential Treatment Facilities for Children and Youth and the Blythedale Children's Hospital are also included under this definition.

The Act, which is now Article 81 of the Education Law, provides a system for the referral, evaluation and educational placement of those children under the custody of a public agency who are thought or known to be handicapped. The system closely parallels the public school procedures mandated by Article 89 of the Education Law and Part 200-2 of the Regulations of the Commissioner of Education. Article 81 addresses three major areas:

- Residential placement decisions by public agencies,
- Educational decisions for those students ultimately placed in a child care institution (CCI),
- Fiscal responsibilities and procedures.

The need to consider educational programming when making residential placement decisions for children thought to be handicapped is reinforced by a requirement that a public agency must request the school district in which the child resides (i.e., district of residence) to evaluate the child and make written recommendations for appropriate educational services. This information assists public agencies dealing with handicapped children deemed to be dependent, neglected, abused or adjudicated as juvenile delinquents or persons in need of supervision (PINS).

Under Article 81, each child care institution maintaining a school and each special act school district is required to appoint and maintain a Committee on the Handicapped. The composition and functions of this Committee are similar to those required of all Committees on the Handicapped by Section 4402 of the Education Law. The overall purpose of such Committees is to evaluate the educational needs of pupils thought to have a handicapping condition and to recommend appropriate special education programs and services in the least restrictive environment that meet those needs. Article 81 specifically mandates the involvement of parents or guardians of the child in any evaluations and recommendations regarding the child's special education program or services.

The public school's written evaluation and recommendation, while facilitating appropriate residential placement decisions, also assists the private school COH in the development of an Individualized Education Program.

The determination of a handicapping condition by the COH of the school district where the child presently lives, (i.e., district of residence) will establish a fiscal responsibility for the school district where the child resided when initially becoming the responsibility of a public agency.

Local District Responsibilities

A school district must conduct an evaluation of a child upon receipt of a request from a public agency or the pre-admission certification committee of a Residential Treatment Facility for Children and Youth (RTF). This evaluation is conducted according to the requirements in Part 200-2 of the Regulations and results in written recommendations for appropriate educational services for those students determined to be handicapped. These recommendations should parallel Phase I of the IEP.

Prior to conducting the evaluation, the school district must provide written notice to the parent that a request to evaluate the child has been made by an appropriate public agency. The notice should also invite the parent to assist in the development of the written recommendation. The written consent of the parents, addressed in Part 200-2 of the Regulations, is not required.

These activities, usually conducted by the school district's Committee on the Handicapped, have three major purposes.

- Providing one part of the information upon which the judge or public agency will make a placement decision,
- Providing the receiving institution with information that will be considered in the development of the child's IEP,
- Establishing school district fiscal responsibility for a portion of the educational cost of those children determined to be handicapped.

The written evaluation and recommendations must be received by the requesting public agency within 30 days of the request. When the Committee does not act within the 30 day period, the Family Court judge may formally order the district to provide the desired material. Legal penalties could be levied against the district for noncompliance with the judge's order.

If it is determined that the child does not have a handicapping condition, the public agency must be notified within 30 days.

The Role of the Private School

Upon the placement of a handicapped pupil by a public agency in either a child care institution's on-campus school or a special act school district, the Committee on the Handicapped of the receiving school must implement the following within 45 calendar days:

- Consider and review the evaluation that was conducted by the Committee on the Handicapped of the pupil's district of residence,

- Prepare Phase I of the Individualized Education Program taking into account the information from the Committee on the Handicapped forwarded by the pupil's district of residence,

- Inform the school's authorized decision-making body* and parent(s) of the recommendations and provide the parent(s) with an opportunity to address the Committee on the Handicapped regarding the recommendations,

- With approval of the facility director and parent(s), place the pupil in the recommended educational setting and forward information to the special education staff for completion of Phase II of the IEP.

The COH must also conduct, at least annually, a review of the pupil's Individualized Education Program and develop a written report on the status of the child.

The private school COH is responsible for forwarding copies of the written report and the new IEP to the appropriate public agency on an annual basis. A Residential Treatment Facility that is not operated by an authorized agency must transmit this information directly to the parents or guardians of the child and the COH of the school district the child resided in when originally placed with the social service district, Division for Youth, or RTF.

The Role of the State Education Department

The Education Department assists in the development of interagency agreements to assure that the provisions of Article 81 are implemented. This includes providing effective training programs, and approval and monitoring processes.

The Role of Public Agencies

Public agencies, under Article 81, are defined as the Family Court, the Division for Youth, or the local social service district. In many cases the Probation Department will act on behalf of the Family Court.

Public agencies and Residential Treatment Facilities which are considering the placement of a child thought to be handicapped must request the school district of residence to evaluate and prepare written recommendations for appropriate educational services. For those students placed in child care institutions, the written evaluation and recommendations developed by the district of residence must be forwarded to the child care institution or special act school district for review.

The Board of Education of the school district in which the child resided when he or she entered care and the State Commissioner of Social Services must be notified within 30 days of the placement of the child. This is the first step in establishing financial liability for the child, and is the responsibility of the local social service district, Division for Youth, or the administrator of a RTF that is not operated by an authorized agency pursuant to social service law.

*Board of Trustees of a CCI that operates a private school, Board of Education of a Special Act school district, or the operator of a RTF for Children and Youth that operates a private school.

These three agencies are also responsible for transmitting copies of the IEP and annual report to the appropriate parties. This includes the parents or guardians of the child and the Committee on the Handicapped of the initial school district. A copy of the evaluation performed by the school district of residence is also sent to the parents by these agencies.

The IEP

Evaluation and Development of Phase I and Phase II: Within 45 days of the placement of a child who is at least 5 years of age, the Committee on the Handicapped of the private school prepares a recommended Individualized Education Program for each child who has been determined to be handicapped.

The Committee develops Phase I of the IEP through its review of the evaluation performed by the school district of residence and the conduct of any other additional evaluation procedures. These proceedings are subject to the due process procedures applicable to all Committees on the Handicapped including parental notification and consent for any further evaluations or placement of any student entering special education for the first time.

Once the parents of the child and the authorized decision making body of the CCI, or the Board of Education of a special act school, agree upon the recommendations, placement in the special education setting can be initiated. The planning conference to develop Phase II of the IEP would then be conducted at a mutually agreeable time.

Upon completion of the IEP, the Committee is also responsible for delivering a copy to the local social service district or the Division for Youth. The public agency is responsible for forwarding copies to the parents and the COH of the school district in which the child resided at the time he or she entered care. A Residential Treatment Facility for Children and Youth that is not operated by an authorized agency will forward this information directly to the appropriate parties.

Program Implementation and Review: The private school Committee on the Handicapped must review the child's program at least annually and prepare a written report which includes the child's status and a determination of whether the educational program should be continued, modified, or terminated. This review is conducted in accordance with the procedures outlined in Section 4402 of the Education Law and Part 200-2 of the Regulations of the Commissioner of Education. The new IEP and annual report are forwarded to the appropriate public agencies or individuals in an identical manner to the initial IEP information dissemination process.

In addition to the annual review, the private school Committee on the Handicapped is responsible for conducting a comprehensive, triennial reevaluation of each handicapped child.

Due Process

A written appeal may be made if the educational evaluation, the educational placement decision, or annual report developed by the private school's Committee on the Handicapped is not acceptable to the parents or guardians, the child, the social service district or the Division for Youth. Appeals are made to the Board of

Trustees of the child care institution which operates a private school or the Board of Education of the special act school district. Appeals are conducted according to Section 4404 of the Education Law. The private school has responsibility for appointment of an impartial hearing officer and for hearing costs. Pending the outcome of any appeal, unless the Commissioner of Education or the educational provider and the parents or the guardians of the child agree otherwise, the child remains in his or her current educational placement.

If the COH of the district of residence determines that the child is not handicapped, the CCI, local social service district, or Division for Youth may request a local Board of Education review. Any further appeal of the Board's determination is made directly to the Commissioner.

Financial Responsibilities

One of the major attributes of the Institution Schools Act is that it provides a relatively consistent approach to the fiscal aspects of private school placements. The Act provides that services received in a child care institution be divided into two general areas, maintenance and tuition.

Maintenance deals essentially with the child's living cost and includes such items as room, board, residential care and medical care. Tuition is the per pupil cost of the child's education program, including instructional services, supplies, equipment, and the cost of maintaining the buildings used for the education program. The law provides that the Department of Social Services and the Department of Education respectively determine maintenance and tuition rates.

Even though these rates are determined by the respective agencies, the local social service department is responsible for all payments. However, the law provides that for placements after July 1, 1981, the district where the child lived when he or she entered care (the initial district) must reimburse the State in an amount equal to the school district's basic contribution. Reimbursement is required only if the child is determined to have a handicapping condition by the Committee on the Handicapped of the district of residence or as a result of an appeal of their determination.

This process provides a reimbursement system for private school placements consistent with those used for school district reimbursement for the cost of pupils attending out-of-State private schools, State-operated or State-supported schools.

The basic contribution is calculated and deducted from State aid due the initial district in the year following the year of the child's attendance at the institutional school. This amount is subsequently added to the State aid due the local social service district. These transactions are conducted at the State government level; accordingly, there are no direct transactions between the school district and the social service agencies.

Questions of Residency

The law provides a mechanism for notifying school districts of children who will be placed and for resolving disputes over where the pupil resided upon entering care.

The public agency making the placement must, within 30 days, notify the Board of Education of the initial district and the State Commissioner of Social Services. If the district wishes to formally deny financial responsibility, it must provide written notice to the Commissioner of Education and the public agency which made the placement within 20 days of receiving the original notice. The only ground for denial of responsibility is that the district was not the child's residence when he or she entered care. The public agency may appeal the denial to the Commissioner of Education.

Role of Local School District Receiving Institutionalized Children

Under Article 81, Section 4005 (3) a child must be admitted to the programs of the public schools or BOCES when the child care institution does not provide educational programs, or when the private school determines that a child should receive educational services in those settings. Financial liability for these placements rests with the Department of Social Services. Until such time as regulations are developed to implement this placement process, it is suggested that districts follow the placement procedures addressed in the remaining paragraphs of this section.

Section 3202 of the Education Law and Part 200-2.12 of the Regulations of the Commissioner establish that children residing in facilities operated by the Office of Mental Health (OMH) and the Office of Mental Retardation and Developmental Disabilities (OMRDD) also have the right to benefit from instruction in a public day school program. This includes programs within the district where the facility is located, in any public school program in a neighboring school district, or in a Board of Cooperative Educational Services program. Upon referral by the facility COH, the Committee on the Handicapped of the district where the facility is located determines whether any of these options are appropriate to the child's needs. A recommendation is then made to the Board of Education for acceptance and placement of the eligible child in the designated program.

In the event the Committee on the Handicapped determines that an appropriate public school program does not exist, it reports its findings to the Board of Education, including justification as to why the program is not suitable to the individual needs of the child. The Board of Education provides written notification of its final decision to the parent (s) or guardian and the chief administrator of the facility in which the child resides. The 30 day time limit applicable to the placement of any handicapped child applies in this situation. The notification must contain a statement that an appeal of the Board of Education's decision may be made directly to the Commissioner of Education.

For placements under Section 3202, the Education Department will reimburse each school district furnishing educational services for the direct cost of the services in accordance with the Regulations of the Commissioner.

The school district in which the child resided at the time the agency assumed responsibility for the support and maintenance in turn reimburses the Education Department for its expenditure in an amount equal to the school district's basic contribution.

Other Considerations

Emergency Placements: For those children who must be placed rapidly in order to protect their health and welfare, or that of their family, the law provides for an emergency placement into a child care institution. In such cases, the evaluation of the child by the school district's Committee on the Handicapped and their subsequent recommendations may be postponed a maximum of 30 days from the date of the placement.

An emergency placement does not, however, relieve the district of its responsibilities for evaluation and recommendation. Where the transportation of the child back to the district of residence is not feasible, the district may contract for conducting the evaluation. Based on this information, the district of residence may make its determination as to the presence of a handicapping condition and develop its recommendations.

Summer School: Where appropriate, summer school programs may be provided for those students placed under Article 81. However, provision of summer school programs is based on documentation of the need for such a program in the child's IEP and Family Court proceedings or Department of Social Services approval of additional tuition days.

Surrogate Parents: Guardianship of children placed in a child care institution by a public agency may remain with the parents. Therefore, the parents' right to speak for their child cannot be denied solely because the public agency has removed the child from their custody. However, if guardianship has been removed from the parent by the courts, parental involvement may be denied.

If the parents or guardians of a child attending a child care institution maintaining a school or special act school district are unknown or unavailable, or if the child is a ward of the State, a surrogate parent may be appointed. A special act school district appoints surrogates according to procedures addressed in Section 200-2.5 (d) of the Regulations of the Commissioner of Education. The Board of Trustees of a child care agency may not appoint surrogate parents. They must apply to the Board of Education of the district of residence or to the public agency having responsibility for the education of the child.

A list of individuals willing to serve as surrogate parents must be maintained by Boards of Education, including special act school districts. Only those individuals meeting the qualifications of Section 200-2.5 (d) may be included on this list. Social workers or case workers employed by social service departments or the private school are not eligible to serve as surrogates. Boards may request that districts in proximity to facilities nominate qualified individuals willing to assist pupils placed in programs far from home.

Day Programs: Those students who do not reside in a child care institution, but who attend a private school associated with a child care institution on a day basis, are students in a day program. As such, they are not affected by Article 81 which applies only to students in residence.

Residential Treatment Facilities for Children and Youth: Residential Treatment Facilities for Children and Youth are in-patient psychiatric facilities which provide active treatment under the direction of a physician for individuals who are

under 21 years of age. These facilities are licensed by the Department of Mental Health and are considered a"community facility for the disabled" under the Mental Hygiene Law. Children who receive care in these residential treatment facilities may be placed in a private school operated by the facility or in a private school operated by an authorized agency.

Each RTF maintaining a school must appoint a Committee on the Handicapped of the same composition as public schools. These Committees have the responsibility of evaluating and placing handicapped children in appropriate special education programs. RTFs which are operated by an authorized agency also have the option of sharing the services of any Committee on the Handicapped, including public school Committees on the Handicapped.

SUMMARY

The purpose of this document has been to explain the circumstances, responsibilities and procedures for educating those of New York State's handicapped children who need private school settings. Handicapped pupils can enter private educational settings through contracts with private schools, through procedures involving State-operated and State-supported schools, or through placement by public agencies. The similarities in these three processes involve the:

- Determination that each of these children needs a private educational setting,
- Development of an Individualized Education Program for each child, with provisions for the input of parents,
- Availability to each child of a full continuum of special educational placements and services,
- Assurance that each child will be educated in his or her least restrictive environment.

APPENDIX A

Obtaining Information About Specific Approved Private Schools for Children with Handicapping Conditions

A list of approved private schools that conform with the basic requirements of Federal and State laws and regulations governing the education of handicapped children is available from the Office for Education of Children with Handicapping Conditions (OECHC). However, a better indication of the scope and quality of a school's program can be obtained from the program reviews conducted through the Regional Offices of the OECHC.

Region I
2 W. Pleasant Avenue
Lancaster, NY 14086
(716) 681-0955

Region II
Tecumseh Elementary School
Nottingham and Waring Roads
Jamesville, NY 13078
(315) 446-9576 or (315) 473-8039

Region III
Cultural Education Center
Room 9B-74
Albany, NY 12230
(518) 474-5356

Region IV
World Trade Center
Tower II, Room 8424
New York, NY 10047
(212) 488-4450

Region V
Salisbury Center
Valentine Road & The Plain Road
Westbury, NY 11590
(516) 997-8700

Region VI
29 North Division Avenue
Peekskill, NY 10566
(914) 739-7822

APPENDIX B

INFORMATION CHECKLIST ORDERING FORM

SINGLE COPIES of the items which are listed on this checklist are available at no cost from the Office for Education of Children with Handicapping Conditions. To receive a copy of any of the items listed below, check off the items which you would like to receive in the space provided, write your name and address on the spaces listed below and return this form to:

New York State Education Department
The Bureau of Program Development Resource Center
Room 1069, Education Building Annex
Albany, New York 12234

Please allow 6 - 8 weeks for delivery.

NAME:_____ POSITION:_____

ADDRESS:_____

_____

_____ ZIP_____

Laws and Regulations

___ 1. Article 89 of the Education Law (revised September 1980) spells out the educational responsibilities of local school districts and the State Education Department to handicapped children. It includes Chapter 853 of the Laws of 1976, Chapter 470 of the Laws of 1977 and other minor revisions.

___ 2. Part 200-2 of the Rules and Regulations of the Commissioner of Education (effective July 1, 1982) which apply to the education of children with handicapping conditions.

___ 3. Article 81 of the Education Law (effective July 1, 1981) governing the education of children residing in child care institutions including handicapped and nonhandicapped.

___ 4. Section 112 of the Education Law (revised June 1980) sets standards of instruction and personnel qualifications for teachers of children in the residential care of any State department or agency or political subdivision.

___ 5. Chapter 66 of the Laws of 1978: Education of children residing in facilities of the Department of Mental Hygiene (Office of Mental Health (OMH) and Office of Mental Retardation and Developmental Disabilities (OMRDD).

___ 6. Chapter 721 of the Laws of 1979: Education of children residing in intermediate care facilities for the mentally retarded.

___ 7. Part 116 of the Rules and Regulations of the Commissioner of Education (revised July 1978) Establish educational programs and services for children in full-time residential care in homes or facilities operated or supervised by the Division for Youth, Department of Mental Hygiene, (Office of Mental Health and Office of Mental Retardation and Developmental Disabilities) or Social Services Districts.

Publications

___ 1. Your Child's Right to an Education: A Guide for Parents of Children with Handicapping Conditions in New York State (revised 1981) This manual is written for parents of children who require special education. It explains the financial and educational responsibilities of the State and local educational agencies for these children.

___ 2. A Handbook for Committees on the Handicapped in New York State (revised 1981) This manual is written for members of the Committee on the Handicapped. It explains the legal responsibilities of the Committee and presents recommended guidelines for carrying out these responsibilities.

___ 3. The Individualized Education Program, A Guide for Development (revised 1981) A working reference and guideline for those directly involved in the process of development, implementation and review of individualized education programs for children with handicapping conditions.

___ 4. The Role of a School Board Member in the Education of Children with Handicapping Conditions (revised 1981) A handbook describing the board member's responsibilities for providing quality educational programs for children with handicapping conditions.

___ 5. Serving Neglected and Delinquent Children in New York State (1981 edition) A manual which discusses a variety of services available to the neglected and delinquent population under Title I.

Brochures and Other Available Materials

___ 1. Do You Need Training and Information on the Education of Handicapped Children? A description of the services available through the Bureau of Program Development and the New York State Training Network including the addresses and telephone numbers for the Associate SETRC Centers (Special Education Training and Resource Centers).

___ 2. New York State Early Childhood Direction Centers: A listing of the Direction Center addresses and telephone numbers with questions and answers on linking preschool handicapped children with services.

___ 3. News Briefs: Published monthly, the Office for Education of Children with Handicapping Conditions newsletter contains information about changes in State and Federal legislation and policy which affect the services provided for pupils who require special education.

___ 4. Questions and Answers About Serving the Educationally Handicapped in New York State. A series which answers the most commonly asked questions on Article 89, Part 200 and Chapter 563 of the Laws of 1980.

Complete and Return to Appropriate Regional Office

OFFICE USE ONLY

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
OFFICE FOR THE EDUCATION OF CHILDREN WITH HANDICAPPING CONDITIONS

REQUEST FOR COMMISSIONER'S APPROVAL OF SERVICES FOR HANDICAPPED CHILDREN
PHC-2

Action of Commissioner
Action of Regional Associate

Date Form Submitted MO DAY YEAR

1. Child's Date of Birth MO DAY YEAR

2. Print Full Name of Child: Last First M.I.

3. Address: Street City NY Zip Code County

OFFICE USE ONLY →

4. Name of Parent or Guardian Last First M.I.

a. Check here if this child resides in a foster home in this district as a result of a placement by the Department of Mental Hygiene pursuant to Chapter 47, Laws of the State of New York, 1977

b. Check here if this child is being educated by this district as a result of a placement by the Department of Mental Hygiene pursuant to Chapter 66, Laws of the State of New York, 1978

c. Check here if maintenance support for a residential placement is provided by New York State Department of Social Services

OFFICE USE ONLY

5. Public School District of Residence

6. Approved School of Placement Name Street City State Zip Code

7. Child's Dates of Attendance From: MO DAY YEAR To: MO DAY YEAR

	Dollar Amounts	Dates (if different from dates of attendance)
9. Tuition-		
Maintenance-		

10. Transportation Variance: One-way distance in miles if more than 50 miles

8. Type of Placement Requested (check only one box)

	IN-STATE NONRES	IN-STATE RES	OUT-OF-STATE NONRES	OUT-OF-STATE RES
a. District Contract (4402)				
b. State Contract With Nonpublic School (4407)				
c. Appointment to State Operated or Supported School for Deaf, Blind, or Human Resources School (4201)				
d. Contract With BOCES				
e. Contract With Special Act District				

-24-

APPENDIX C PHC-2

11. Check the primary handicapping condition of the child and provide a detailed description of how the educational needs of the child will be served by the requested placement:

A. Primary Handicapping Condition (Check one)

- ☐ 01 Educable Mentally Retarded
- ☐ 02 Trainable Mentally Retarded
- ☐ 03 Emotionally Disturbed
- ☐ 04 Severely Speech/Language Impaired
- ☐ 05 Deaf
- ☐ 06 Hard of Hearing
- ☐ 07 Legally Blind
- ☐ 08 Partially Sighted
- ☐ 09 Physically Handicapped
  Describe: _____
  _____
  _____

B. Detailed description of child's educational needs. Include recommendation for related services. (Attach additional documentation as necessary)

CERTIFICATION DATA

12. The District Committee on the Handicapped has reviewed the information on the above-named child and certifies that the review and recommended placement are in accordance with the Commissioner's Regulations.

Signature _____ Date _____
Chairperson, Committee on Handicapped

13. The Board of Education has determined that the program of a neighboring district or BOCES is not appropriate to the needs of the above-named child and hereby requests approval for the services described.*

Signature _____ Date _____
President, Board of Education

* If the BOCES does have an appropriate program for the above-named child, attach a statement to this form indicating the reason for the requested placement rather than the BOCES program.

14. Person Completing This Form

Name
Last ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
First ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
Title ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
Telephone ☐☐☐ ☐☐☐-☐☐☐☐
Area Code Number

APPENDIX D PHC-10

The University of the State of New York
THE STATE EDUCATION DEPARTMENT
Bureau of State Operated/State Supported Schools
Room 1074 EBA
Albany, New York 12234

APPLICATION TO THE COMMISSIONER OF EDUCATION FOR APPROVAL TO ATTEND A SCHOOL FOR THE BLIND, DEAF, OR SEVERELY PHYSICALLY HANDICAPPED
PHC-10

Instructions

1. Please PRINT or TYPE in completing application.

2. Attach the following medical reports as applicable.

   FOR A DEAF CHILD - A current audiogram (done within the past three years).

   FOR A BLIND CHILD - A current opthamological examination report (done within the past three years).

   FOR A SEVERELY PHYSICALLY HANDICAPPED CHILD - A current medical report describing physical disabilities.

3. If your child is of school age, contact your local school district to have the following reports forwarded to the above address: Individual Education Plan (IEP), physical examination report, psychological examination and other information which may be appropriate.

   NOTE: During the processing of this Application it is necessary that your child remain in his or her current placement to ensure the continuity of his or her educational program.

For further assistance in completing this application please contact:
Ms. Evelyn Vido, Phone: (518) 474-1960.

1. Child's Name _____ (Last) (First) (MI) 2. Date of Birth ___/___/___ Mo. Day Yr.

3. Address _____ (Street) (City) (State) (Zip Code)

   County of Location _____

4. Telephone Number _____ (Area Code) (Number)

5. Local School District of Residence _____

6. Parent's Names _____ (Father) _____ (Mother)

7. Indicate how long child has been a resident of New York State . . . . _____

8. Indicate language(s) other than English spoken in the child's home _____

_____

9. Indicate child's primary handicapping condition (check one only)

Deaf	☐	Legally Blind	☐
Blind	☐	Physically Handicapped . .	☐

10. If child has multiple handicapping conditions (check all that apply).

Mentally Retarded	☐	Deaf	☐
Autistic	☐	Hard of Hearing	☐
Emotionally Disturbed . .	☐	Visually Impaired	☐
Speech Impaired	☐	Orthopedically Impaired . .	☐
		Other Health Impaired . . .	☐

11. Indicate current educational placement of child

School Name _____

Address _____
(Street) (City) (State) (Zip Code)

12. List all prior educational placements and years of attendance.

School Name _____

Address _____
(Street) (City) (State) (Zip Code)

Period of Attendance: From _____ To _____

School Name _____

Address _____
(Street) (City) (State) (Zip Code)

Period of Attendance: From _____ To _____

PERSON COMPLETING THIS APPLICATION

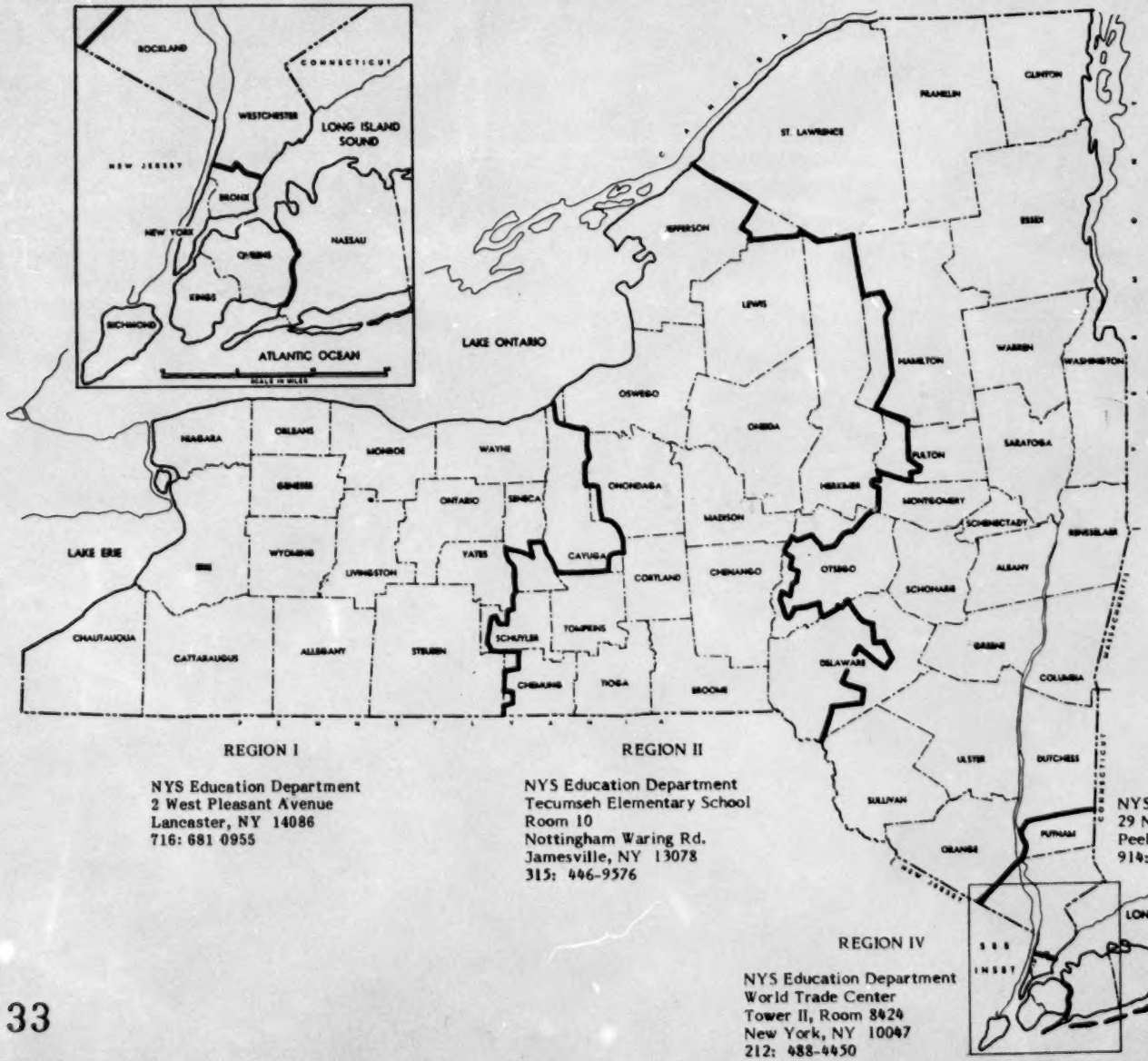
NAME _____

TITLE _____

PHONE _____
(Area Code) (Number)

_____
Signature of Parent or Guardian

OECHC REGIONAL OFFICES AND AREAS SERVED



REGION I

NYS Education Department
2 West Pleasant Avenue
Lancaster, NY 14086
716: 681 0955

REGION II

NYS Education Department
Tecumseh Elementary School
Room 10
Nottingham Waring Rd.
Jamesville, NY 13078
315: 446-9576

REGION III

NYS Education Department
9B74 CEC
Albany, NY 12230
518: 474-5356

REGION IV

NYS Education Department
World Trade Center
Tower II, Room 8624
New York, NY 10047
212: 488-4450

REGION V

NYS Education Department
Salisbury Center
Valentines Road & The Plain Road
Westbury, NY 11590
516: 997-8700

REGION VI

NYS Education Department
29 North Division Avenue
Peekskill, NY 10566
914: 739-7822